

REMARKS

In the Office Action issued on June 5, 2008, the Examiner:

- rejected claims 22 and 30 through 32 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 7,128,759 ("Osborne");
- rejected claims 22 and 30 through 32 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 7,452,371 ("Pavcnik").

The Applicants have fully considered the Office Action and cited references and submit this Reply and Amendment in response to the Examiner's action. Reconsideration of the application for patent is requested.

Amendments to the claims

The Applicants have herein amended independent claim 22 to further define the attachment pathways as defined by the support structure. The amendments to claim 22 are made to further clarify the structural arrangement required by the claim in an effort highlight the differences between the claimed valve prosthesis and the cited references to the Examiner.

Each of the amendments is fully supported by the application as originally filed; no new matter has been introduced. Exemplary support is found in Figures 13 and 14, and in paragraphs [0042], [0045], [0046], and [0051].

Request for reissuance of Office action

As described below, Osborne does not qualify as prior art against the current application. In light of this error, Applicants respectfully request that the Office issue another action that acknowledges the removal of this reference as applied against the pending claims.

Rejections under 35 U.S.C. §102

Osborne

The Examiner rejected claims 22 and 30 through 32 under 35 U.S.C. §102(b) as being anticipated by Osborne.

The applicants specifically traverse this rejection of the claims on the grounds that Osborne does not qualify as prior art against the present application for patent under §102(b).

The present application claims priority to a provisional application filed on April 24, 2003 and another provisional application filed on December 18, 2003. The Osborne patent issued on October 31, 2006. The application that matured into the Osborne patent published on December 2, 2004. Clearly, neither of these dates are more than one year before either of the priority dates for the present application. Indeed, the Osborne application claims priority to a provisional application that was filed *after* the earlier of these priority dates – on May 19, 2003.

As a result, Osborne does not qualify as prior art under §102(b). Indeed, the reference does not qualify as prior art under any section of §102(b).

Considering this status of Osborne, the applicants respectfully request that the Examiner remove all rejections based on this reference.

Pavcnik

The Examiner rejected claims 22 and 30 through 32 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 7,452,371 (“Pavcnik”).

As an initial matter, applicants note that, while the Pavcnik patent does not qualify as prior art under §102(b) (the patent issued on November 18, 2008), the application that matured into the Pavcnik patent published on November 8, 2001 and, as a result, does qualify as §102(b) prior art.

As amended herein, claim 22 explicitly requires, among other limitations, that:

- the support structure defines first and second attachment pathways, the first attachment pathway includes a first proximal portion extending from the first commissure, a second proximal portion extending from the second commissure, and a first distal portion angling obliquely from the first and second proximal portions and defining a first distal commissure at the second end of the support structure, the second attachment pathway including a third proximal portion extending from the first commissure, a fourth proximal portion extending from the second commissure, and a second distal portion angling obliquely from the third and fourth proximal portions and defining a second distal commissure at the second end of the support structure, the first, second, third, and fourth proximal portions extending along a substantial portion of the length of the prosthesis and having a substantially parallel orientation with respect to the longitudinal axis of the support structure, the first and second distal commissures disposed substantially opposite each other with respect to the longitudinal axis

Pavcnik does not anticipate independent claim 22 at least because it fails to teach this specific structural arrangement required by the claim. None of the proximal portions of the attachment pathway of the device taught by Pavcnik can be said to have a “substantially parallel orientation” in relation to the longitudinal axis of the support structure. Rather, the struts defining the attachment pathway of Pavcnik extend along a line that intersects the longitudinal axis of the device (see, e.g., Figures 23 through 27). Even if a minimal proximal fragment of the attachment pathway (near the bends) is considered to have such an orientation, it cannot be said that such a portion comprises “a substantial portion of the length of the prosthesis.”

Furthermore, no portion of the struts defining the attachment pathway of Pavcnik can be said to comprise a distal portion “angling obliquely from

the...proximal portions" as required by the claims. To the contrary, the distal portions of the Pavcnik attachment pathway extend along the same linear path taken by the proximal portions. There is no angle of transition between proximal and distal portions of the Pavcnik attachment pathway.

This structural arrangement of the Pavcnik device provides an area of coaptation between the valve leaflets where the support structure lacks a strut or other structural feature that has a substantially parallel orientation with respect to the longitudinal axis of the device. As a result, the leaflets must contain significant slack to achieve the coaptation area (see, *e.g.*, Figure 23 of Pavcnik).

In contrast, each of the first, second, third, and fourth proximal portions of the attachment pathways defined by the support structure of the claimed device has a substantially parallel orientation with respect to the longitudinal axis of the device. As a result, the desired coaptation area is achieved without requiring significant slack in the leaflets (see, *e.g.*, Figure 13 of the present application).

For at least these reasons, Pavcnik does not, and cannot, anticipate claim 22 as amended herein. All other remaining claims depend from independent claim 22. Pavcnik, therefore, fails to anticipate these claims for the same reasons. The applicants respectfully submit that this rejection of the claims has been overcome and request its withdrawal.

CONCLUSION

The Applicants have submitted this Reply and Amendment under the provisions of 37 C.F.R. §1.116 in order to present the claims in better condition for appeal.

Entry of this amendment under §1.116 is appropriate and is respectfully requested. Additionally, Applicants respectfully request that the Examiner issue an Advisory Action indicating the status of this Reply and Amendment.

Furthermore, Applicants maintain that all pending claims define patentable subject matter. A Notice of Allowability relating to all claims currently under consideration remains appropriate and is respectfully requested by the Applicants.

Should the Examiner have any questions regarding this Reply and Amendment, or the remarks contained herein, the undersigned attorney would welcome the opportunity to discuss such matters with the Examiner.

Respectfully submitted,

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